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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/772,046	02/04/2004	Thomas W. Schrimsher SR.	228-002.001 Shrock	3921
31179	7590	01/25/2005	EXAMINER	
JAMES D. HALL BOTKIN & HALL, LLP 105 E. JEFFERSON BLVD. SUITE 400 SOUTH BEND, IN 46601				EDELL, JOSEPH F
ART UNIT		PAPER NUMBER		
		3636		
DATE MAILED: 01/25/2005				

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	10/772,046	SCHRIMSHER, THOMAS W.	
	Examiner	Art Unit	
	Joseph F Edell	3636	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM
 THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) Responsive to communication(s) filed on 04 November 2004.
 2a) This action is FINAL. 2b) This action is non-final.
 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) Claim(s) 1-17 is/are pending in the application.
 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
 5) Claim(s) _____ is/are allowed.
 6) Claim(s) 1-17 is/are rejected.
 7) Claim(s) _____ is/are objected to.
 8) Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) The specification is objected to by the Examiner.
 10) The drawing(s) filed on 04 February 2004 is/are: a) accepted or b) objected to by the Examiner.
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
 a) All b) Some * c) None of:
 1. Certified copies of the priority documents have been received.
 2. Certified copies of the priority documents have been received in Application No. _____.
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Claim Objections

1. Claims 1, 2, and 9 are objected to because of the following informalities:
 - a. claim 1, line 2, "aa" should read --a--;
 - b. claim 2, lines 3-4, "a substantially flat horizontal sleeping surface" should read --a horizontal substantially flat surface--;
 - c. claim 9, lines 3-4, "a substantially flat horizontal sleeping surface" should read --a horizontal substantially flat surface--.

Appropriate correction is required.

Claim Rejections - 35 USC § 102

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

3. Claims 1, 4-6, and 12-14 are rejected under 35 U.S.C. 102(b) as being anticipated by U.S. Patent No. 5,984,397 to Dawson et al.

Dawson et al. disclose a seating for an automotive vehicle that includes all the limitations recited in claims 1, 4-6, and 12-14. Dawson et al. show a seat having a seat frame 60 (Fig. 2), a back frame 50 (Fig. 2), a seating position (Fig. 2) in which the seat frame is horizontal and the back frame is inclined with respect to the seat frame, an

auxiliary position (Fig. 8), a storage position (Fig. 5) in which the frames are vertical, and a supporting means 25,70 (Fig. 3) for supporting the frame between the seating position, the auxiliary position, and the storage position wherein the supporting means includes a leg 36 (Fig. 3) movable between a supporting position (Fig. 3) projecting from the frames and a folded position (Fig. 5), an actuating link 85 (Fig. 3) that is a rigid member pivotally connected to the leg and support means for moving the leg between the supporting position and folded position tucked along the frames, and movable 21 (Fig. 3) and immovable portions 25 (Fig. 3) connecting the rigid member and support means.

Claim Rejections - 35 USC § 103

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. Claims 2, 3, 7-11, and 15-17 are rejected under 35 U.S.C. 103(a) as being unpatentable over Dawson et al. in view of U.S. Patent No. 3,171,684 to Carte.

Dawson et al. disclose a seating for an automotive vehicle that is basically the same as that recited in claims 2, 3, 7-11, and 15-17 except that the auxiliary position lacks seat and back frames defining a flat horizontal sleeping surface, as recited in the claims. Carte shows a seating similar to that of Dawson et al. wherein the seating has a main supporting member 17,18 (Fig. 1) movable between a vertical storage position

(Fig. 4) and a horizontal use position (Fig. 1), a leg 25 (Fig. 3) pivotally mounted on the main support member and movable between the use position (Fig. 3) and a folded position (Fig. 4), a seat frame 10 (Fig. 1) and a back frame 12 (Fig. 1) each pivotally and slidably mounted on the main supporting member by a linkage means 15,16 (Fig. 1) and movable between a seating position (Fig. 1) and an auxiliary position (Fig. 4) wherein the seat frame and the back frame are flush with one another to define a horizontal flat surface and are vertically flat when the main supporting member is folded into the folded position, and an actuating link 27 (Fig. 3) engaging the leg at opposite ends thereof to move the leg from the active position to the folded position wherein the actuating link is pivotally connected to the fixed support. Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the seating of Dawson et al. such that the seat frame and back frame are each pivotally and slidably mounted on the main supporting member by a linkage means such that when in the auxiliary position the frames are flush to define a horizontal substantially flat surface and the flat surface extends vertically when the main supporting member is moved into the storage position, such as the seating disclosed in Carte. One would have been motivated to make such a modification in view of the suggestion in Carte that the pivotally and slidably mounted seat and back frames provide a sleeping surface that folds vertically to a stored position.

Response to Arguments

6. Applicant's arguments filed 04 November 2004 have been fully considered but they are not persuasive. With respect to the objections of claims 2 and 9, dependent claims 3 and 10 recite "said substantially flat surface" which refers to the structural limitation recited in claims 2 and 9. Therefore, claims 2 and 9 should recite "a horizontal substantially flat surface" for consistency. Also, claims 3 and 10 would be consistent if amended to recite "said substantially flat horizontal sleeping surface". Next, Applicant argues that Dawson fails to disclose a seat frame and a back frame "each moveably mounted on said main supporting member" because the seat frame is fixed relative to the supporting member. However, Figures 4-5 of Dawson show that both the seat frame and back frame rotate relative to the supporting member during movement between the use and folded positions. With respect to the new limitation reciting that the seat and back frames are moveable "toward and away from" the wall, Dawson meets this limitation because both the seat and back frames move toward and away from the wall. While the seat frame does have some transverse movement, both the seat and back frame move about pivot 25 (Fig. 4) toward and away from the wall during the movement between the use and folded positions. Lastly, Applicant states that it is not apparent how the seat of Dawson may accommodate the support frame of Carte. See the above rejection for clarification.

Conclusion

7. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

8. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Joseph F. Edell whose telephone number is (703) 605-1216. The examiner can normally be reached on Mon.-Fri. 8:30am-5:00pm.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should

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you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

JE
January 24, 2005


Peter M. Cuomo
Supervisory Patent Examiner
Technology Center 3600